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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA and )  
THE STATE OF NEVADA, )  
Plaintiffs ) CASE NUMBER  
v. ) 2:17-CV-02508-APG-VCF  
THE CITY OF NORTH LAS VEGAS, ) UNOPPOSED MOTION TO  
Defendant ) ENTER CONSENT DECREE

Plaintiff, the United States of America, acting on behalf of the United States Environmental Protection Agency (EPA), respectfully moves for entry of the Consent Decree filed with the Court on September 27, 2017 (EFC No. 2). This Motion is unopposed by Co-Plaintiff the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, Bureau of Water Pollution Control (NDEP) and Defendant City of North Las Vegas (City).

The proposed Consent Decree embodies a settlement reached between all parties, and it resolves all the claims of both the United States and the State of Nevada filed against the City of

1 North Las Vegas in this case pursuant Sections 307 and 308 of the Clean Water Act (CWA), 33  
2 U.S.C. §§ 1317-1318, the terms of the City's National Pollutant Discharge Elimination System  
3 permit (NPDES permit), the federal pretreatment regulations, found at 40 C.F.R. § 403, and  
4 Nevada Water Pollution Control Law Nev. Rev. Stat. §§ 445A.300-445A.730 (NWPCL). As is  
5 required by the Department of Justice regulation 28 C.F.R. § 50.7, notice of the proposed  
6 settlement was published in the Federal Register on October 4, 2017. See 82 Fed. Reg. 46287.  
7 This notice established a thirty-day period for submission of public comments to the Department  
8 of Justice. The United States has not received any comments in response to this notice.

9 For the reasons set forth in the accompanying memorandum of points and authorities, the  
10 Court should enter the Consent Decree by signing on page 28.

11  
12 Respectfully submitted this 22<sup>nd</sup> day of November 2017.

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15 Environment and Natural Resources Division  
16 *s/ Esperanza Anderson*  
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1                   **MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES FOR**  
 2                   **THE ENTRY OF THE LODGED CONSENT DECREE**

3                   **I.               LEGAL AND FACTUAL BACKGROUND**

4                   A.           CWA Statutory Framework

5                   The objective of the CWA is to restore and maintain the integrity of the nation's  
 6 waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a). To accomplish this goal, the CWA  
 7 prohibits the discharge of any pollutants to navigable waters from any point source, unless the  
 8 discharge is in compliance with various provisions of the CWA. Section 301(a) of the CWA,  
 9 33 U.S.C. § 1311(a). One of the CWA's principal methods of regulating discharges is  
 10 through the NPDES permit program established by Section 402 of the CWA, under which the  
 11 discharge of pollutants from point sources may be authorized in accordance with the  
 12 conditions and limitations of the permit. Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

13                  Section 402(a) requires that NPDES permits meet all applicable requirements of the  
 14 CWA, including the pretreatment requirements at Section 307 of the CWA, 33 U.S.C. § 1317.  
 15 Section 307 of the CWA also requires the establishment of regulations to prevent the  
 16 introduction of any pollutant into a Publicly Owned Treatment Works if that pollutant  
 17 interferes with, passes through, or is otherwise incompatible with the operation of the POTW.<sup>1</sup>

18                  Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application  
 19 to and approval by EPA, to administer the NPDES permitting program. The State of Nevada,  
 20 through NDEP, applied for and received authorization from EPA to administer the State's  
 21 NPDES permitting program, and does so in accordance with the NWPCL. The State of  
 22 Nevada, however, has not applied and EPA has not authorized the State to administer a  
 23 Pretreatment Program as part of its NPDES permitting program. Consequently, EPA  
 24 administers and is the Approval Authority for the Pretreatment Program in the State of  
 25 Nevada.

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26  
 27                  <sup>1</sup> 40 C.F.R. § 403.3(q) defines a POTW as a "treatment works as defined by Section 212(2) of the [CWA], 33 §  
 28 1292(2), which is owned or operated by the state or a municipality . . . includ[ing] any devices or systems used in  
                          the storage [or] treatment . . . of municipal sewage . . ." unless the State has assumed that local responsibility.

1 Pursuant to Section 307(b)(c) and (d) of the CWA, EPA promulgated the General  
2 Pretreatment Regulations for Existing and New Sources of Pollution (General Pretreatment  
3 Regulations) at 40 C.F.R. Part 403. In pertinent parts, the General Pretreatment Regulations  
4 require the following:

- 5 •40 C.F.R. § 403.8 requires that a Pretreatment Program be established by  
6 “[a]ny POTW … with a total design flow greater than 5 million gallons per day  
7 (mgd) and receiving from Industrial Users pollutants which [may] [p]ass  
8 [t]hrough or [i]nterfere with the operation of the POTW....”
- 9 •40 C.F.R. § 403.8(f) requires a POTW Pretreatment Program to include,  
10 among other things, control mechanisms (such as permits) to ensure that  
11 Industrial Users sending wastewater to the POTW comply with pretreatment  
12 standards and requirements.
- 13 •40 C.F.R. § 403.5 requires a POTW to develop specific limits as needed to  
14 prevent discharges that cause a violation of the POTW’s NPDES permit,  
15 disrupt the POTW’s treatment process, cause corrosion in the POTW, cause  
16 toxic gases presenting acute worker safety problems in the POTW, or violate  
17 various other prohibitions listed under 40 C.F.R. §§ 403.5(a)(1) and (b). These  
18 specific limits are known as local limits.
- 19 •40 C.F.R. § 403.9 requires a POTW to submit its Pretreatment Program to the  
20 “Approval Authority” for approval.
- 21 •When a POTW’s Pretreatment Program is approved, the POTW becomes a  
22 “Control Authority” as defined in 40 C.F.R. § 403.3(f).
- 23 •40 C.F.R. § 403.8(f)(2)(i) requires the Control Authority to identify and locate  
24 all possible Industrial Users which might be subject to the POTW Pretreatment  
25 Program.
- 26 •40 C.F.R. § 403.8(f)(1)(iii) requires the Control Authority to control through  
27 permits or similar means the wastewaters sent to the POTW by Industrial Users  
28 to ensure compliance with applicable Pretreatment Standards and

1 Requirements.

2 •40 C.F.R. § 403.8(f)(1)(iii)(B)(4) requires the Control Authority to include  
3 notification requirements in enforceable individual discharge permits issued to  
4 Industrial Users.

5 •40 C.F.R. § 403.8(f)(2)(v) requires the Control Authority to randomly sample  
6 and analyze the effluent of its Industrial Users, and to randomly sample and  
7 analyze the effluent of its Significant Industrial Users at least once a year.

8 •40 C.F.R. § 403.12(o)(2) requires the Control Authority to maintain records of  
9 its monitoring activities for at least three years.

10 •40 C.F.R. § 403.8(f)(2)(v) requires the Control Authority to conduct  
11 inspections and surveillance activities of its Significant Industrial Users at least  
12 once a year in order to identify, independent of information supplied by  
13 Industrial Users, occasional and continuing noncompliance with pretreatment  
14 standards.

15 •40 C.F.R. § 403.8(f)(2)(iv) requires the Control Authority to receive and  
16 analyze the self-monitoring reports and other notices submitted by its Industrial  
17 Users.

18 •40 C.F.R. § 403.8(f)(2)(vi) requires the Control Authority to evaluate whether  
19 each of its Significant Industrial Users need to develop and implement a slug  
20 discharge control plan.

21 •40 C.F.R. § 403.8(f)(5) requires the Control Authority to develop and  
22 implement an enforcement response plan, which contains detailed procedures  
23 indicating how the City will investigate and respond to instances of Industrial  
24 Users noncompliance.

25 •40 C.F.R. § 403.8(f)(3) requires the Control Authority to have sufficient  
26 resources and qualified personnel to carry out the authorities and procedures  
27 required by 40 C.F.R. §§ 403.8(f)(1) and (2) for its Pretreatment Program.

28 Section 308 of the CWA, 33 U.S.C. § 1318, and Nev. Rev. Stat. §§ 445A.655 and

1 445A.660, authorize EPA and Nevada to require inspection and monitoring to determine  
 2 compliance with the CWA, the NWPCL, and the NPDES permit. Additionally, Section 308  
 3 of the CWA mandates that EPA and Nevada are to have access to any records, reports or  
 4 information related to compliance inspection and monitoring.

5 Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to  
 6 commence a civil action for appropriate relief, including a permanent or temporary injunction,  
 7 when any person is in violation of Section 307 or 308 of the CWA, 33 U.S.C. § 1317 or 1318,  
 8 or any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of  
 9 the CWA, 33 U.S.C. § 1342. Nevada provides similar authority to NDEP. Nev. Rev. Stat.  
 10 §§ 445A.675 and 445A.695.

11 Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4 provide that  
 12 any person who violates Section 307 or 308 of the CWA, 33 U.S.C. § 1317 or 1318, or  
 13 violates any permit condition or limitation in an NPDES permit issued pursuant to Section  
 14 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$37,500  
 15 per day per violation occurring on or before November 2, 2015, \$51,570 per day per violation  
 16 for CWA violations occurring after November 2, 2015. Nev. Rev. Stat. § 445A.700 provides  
 17 a person who violates or aids or abets in the violation of any provision of Nev. Rev. Stat. §§  
 18 445A.300 to 445A.730, inclusive, or of any permit, regulation, standard or final order issued  
 19 thereunder, shall pay a civil penalty of not more than \$25,000 for each day of the violation.

20       B.     The City of North Las Vegas' CWA Violations

21       On or about June 2011, North Las Vegas constructed and commenced operating its  
 22 waste water treatment plant (WWTP) and sanitary sewer system. Pursuant to Section 402(a)  
 23 of the CWA, 33 U.S.C. § 1342(a), and Nev. Rev. Stat. § 445A.465, on or about April 12,  
 24 2010, NDEP issued North Las Vegas NPDES Permit number NV0023647 (2010 Permit),  
 25 which expired in 2015. North Las Vegas's NPDES permit was reissued on or about April 1,  
 26 2015 (2015 Permit) and it expires on March 31, 2020.

27       At all relevant times herein, North Las Vegas' NPDES permit has authorized the City  
 28 to discharge treated municipal wastewater from its WWTP to the Las Vegas Wash, subject to

1 certain limitations and conditions set forth in the NPDES permit.<sup>2</sup>

2 North Las Vegas' NPDES permit requires the City to comply with an EPA-approved  
 3 Pretreatment Program. NPDES Permit number NV0023647, at Section I.A.18(a), p13 (2010  
 4 Permit) and at Section B.PT.1.1., p 58 (2015 Permit); and the permit requires North Las  
 5 Vegas to "implement and enforce [its] Pretreatment Program pursuant to 40 C.F.R. Part 403 . .  
 6 . and be responsible for and liable for the performance of all Control Authority pretreatment  
 7 requirements contained in 40 C.F.R. Part 403." NPDES Permit number NV0023647, at  
 8 Section I.A.18, p13 (2010 Permit) and at Section B.PT.1, p58 (2015 Permit).

9 On September 29 and 30, 2014, EPA, PG Environmental, which is an EPA contractor,  
 10 and NDEP completed a pretreatment compliance inspection of the North Las Vegas  
 11 Pretreatment Program. Thereafter, on June 26, 2015, EPA issued Administrative Order  
 12 CWA-306(a)-15-011 to North Las Vegas citing the municipality with numerous violations of  
 13 the CWA, its NPDES permit and the federal pretreatment regulations. A summary of the  
 14 City's violations, which are alleged in this case by EPA and NDEP are listed below:

15 1. The City failed to update its Sewer Use Ordinance (SUO) upon completion of  
 16 the City's new WWTP in 2011; without North Las Vegas' SUO identifying its WWTP as part  
 17 of the treatment works for the City, the City failed to have the necessary legal authority to  
 18 apply and enforce 40 C.F.R. Part 403 as is required by the City's NPDES permit.  
 19 Additionally, North Las Vegas' SUO failed to contain "streamlining provisions," promulgated  
 20 by EPA, on October 14, 2005, in the federal pretreatment regulations, which are also required  
 21 to be included in North Las Vegas' SUO pursuant to 40 C.F.R. Part 403 and its NPDES  
 22 permit;

23 2. The City failed to submit for EPA's approval a Pretreatment Program as  
 24 required by 40 C.F.R. § 403.8 and its NPDES permit;

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26 <sup>2</sup> North Las Vegas discharges its treated wastewater through two designated outfalls: Outfall 001 discharges via  
 27 Sloan Channel to the Las Vegas Wash and Outfall 002 discharges directly to Las Vegas Wash. From these  
 28 outfalls, North Las Vegas' wastewater then travels approximately twelve miles, at which point it is diverted  
 under Lake Las Vegas, through two 7 foot diameter pipes, and then it discharges to Las Vegas Bay, which is the  
 western edge of Lake Mead.

1       3.     The City failed to identify and locate all possible Industrial Users which might  
2 be subject to the POTW Pretreatment Program as is required by 40 C.F.R. § 403.8(f)(2)(i) and  
3 its NPDES permit;

4       4.     The City failed to develop technically specific limits (local limits) for its  
5 WWTP to prevent discharges that could cause a violation of its NPDES permit, disrupt the  
6 WWTP's treatment process, or violate various other prohibitions listed under 40 C.F.R. §  
7 403.5(a);

8       5.     The City failed to evaluate its permitting process and ensure that it controls the  
9 contribution of each industrial user to the WWTP through current, unexpired permits to  
10 ensure compliance with applicable pretreatment standards and requirements as is required by  
11 40 C.F.R. § 403.8(f)(1)(iii) and its NPDES permit;

12      6.     The City failed to include notification requirements in enforceable individual  
13 discharge permits issued to Industrial Users as is required by 40 C.F.R. § 403.8(f)(1)(iii)(B)(4)  
14 and its NPDES permit;

15      7.     The City failed to randomly sample and analyze the effluent of its Industrial  
16 Users, and to randomly sample and analyze the effluent of its Significant Industrial Users at  
17 least once a year as is required by 40 C.F.R. § 403.8(f)(2)(v) and its NPDES permit;

18      8.     The City failed to maintain records of its monitoring activities for at least three  
19 years as is required by 40 C.F.R. § 403.12(o)(2) and its NPDES permit;

20      9.     The City failed to receive and analyze the self-monitoring reports and other  
21 notices submitted by its Industrial Users as is required by 40 C.F.R. § 403.8(f)(2)(iv) and its  
22 NPDES permit;

23      10.    The City failed to conduct inspections and surveillance activities of its  
24 Significant Industrial Users at least once a year in order to identify, independent of  
25 information supplied by Industrial Users, occasional and continuing noncompliance with  
26 pretreatment standards as is required by 40 C.F.R. § 403.8(f)(2)(v) and its NPDES permit;

27     11.    The City failed to evaluate whether each of its Significant Industrial Users  
28 needed to develop and implement a slug discharge control plan as is required by 40 C.F.R. §

1 403.8(f)(2)(vi) and its NPDES permit;

2       12. The City failed to develop and implement an enforcement response plan, which  
3 contains detailed procedures indicating how the City will investigate and respond to instances  
4 of Industrial Users' noncompliance as is required by 40 C.F.R. § 403.8(f)(5) and its NPDES  
5 permit;

6       13. The City failed to have sufficient resources and qualified personnel to carry out  
7 the authorities and procedures required by 40 C.F.R. §§ 403.8(f)(1)and(2) and its NPDES  
8 permit.

9           C. Settlement Negotiations with the City of North Las Vegas

10          In response to the Administrative Order, the City did not dispute any of the specific  
11 violations cited by EPA, but, instead, commenced to undertake all necessary steps to develop  
12 and seek approval of an appropriate pretreatment program, including getting the City's  
13 Managers to approve new sewer use ordinances and hire the additional WWTP personnel  
14 required to properly maintain a pretreatment program. Additionally, the City continued to  
15 cooperate with both EPA and NDEP to come into compliance with the federal pretreatment  
16 regulations, its NPDES permit, and the NWPL.

17          After several months of negotiations, the parties reached a proposed settlement that is  
18 memorialized in the proposed Consent Decree lodged in this case.

19           D. Proposed Consent Decree

20          The proposed settlement requires the City to comply with its NPDES permit issued  
21 under the CWA, the federal pretreatment regulations found at 40 C.F.R. Part 403, and State  
22 laws Nev. Rev. Stat. §§ 445A.500-530. The proposed settlement also requires the City to  
23 submit its recently developed pretreatment program to EPA for final approval, and the  
24 settlement requires the City to pay a civil penalty of \$385,000, which is to be split equally  
25 between the federal and state governments.

26           **II.           LEGAL STANDARD**

27          The legal standard for a district court's review of a proposed settlement is whether it is  
28 fair (substantively and procedurally), reasonable, and consistent with the purposes of the

1 statute under which the action is brought. United States v. Aerojet Gen. Corp., 606 F.3d 1142,  
 2 1152 (9th Cir. 2010) citing United States v. Montrose Chem. Corp. of Cal., 50 F. 3d 741, 747  
 3 (9<sup>th</sup> Cir. 1995); see also United States v. DiBiase, 45 F.3d 541, 543 (1st Cir. 1995) (quoting  
 4 United States v. Cannons Eng'g Corp., 899 F.2d 79, 85 (1st Cir. 1990)).

5 Additionally, although a district court generally makes an independent evaluation of  
 6 the settlement, federal courts have long recognized “the strong policy favoring voluntary  
 7 settlement of litigation.” United States v. BP Exploration & Oil Co., 167 F. Supp. 2d 1045,  
 8 1050 (N.D. Ind. 2001) (citing Cannons, 899 F.2d at 840; United States v. Hooker Chem. &

9 Plastics Corp., 776 F.2d at 410, 411 (2d Cir. 1985)). “This presumption is particularly strong  
 10 where a consent decree has been negotiated by the Department of Justice on behalf an agency,  
 11 like the EPA which is an expert in its field.” United States v. Chevron U.S.A., 380 F. Supp.2d  
 12 1104, 1111 (N.D. Cal. 2005) (citing United States v. Akzo Coatings of Am., Inc., 949 F.2d  
 13 1409, 1426 (6th Cir.1991)); see also Hooker Chem., 776 F.2d at 411; SEC v. Randolph, 736  
 14 F.2d 525, 529 (9<sup>th</sup> Cir. 1984); Kelley v. Thomas Solvent Co., 717 F. Supp. 507, 515 (W.D.  
 15 Mich. 1989)).

16 Additionally, several courts have held that “[p]rotection of the public interest is the  
 17 key consideration in assessing whether a decree is fair, reasonable and adequate.” See, e.g.,  
 18 Akzo, 949 F.2d at 1435 (citing In re Acushnet River & New Bedford Harbor, 712 F. Supp.  
 19 1019, 1028 (D. Mass. 1989) and United States v. Ketchikan Pulp Co., 430 F. Supp. 83, 86 (D.  
 20 Ala. 1977)); United States v. Georgia-Pac. Corp., 960 F. Supp. 298, 299 (N.D. Ga. 1996). “A  
 21 consent decree may not contravene the statute upon which the initial claims are based. Where  
 22 a law suit [sic] seeks to enforce a statute, the most important factor as to public policy is  
 23 whether the decree comports with the goals of Congress.” BP Exploration, 167 F. Supp. 2d  
 24 at 1054 (citing Sierra Club v. Coca-Cola Corp., 673 F. Supp. 1555, 1556 (M.D. Fla. 1987)).

### 25           **III.           LEGAL ANALYSIS**

#### 26           **A. The Proposed Consent Decree Is Fair Both Procedurally and Substantively.**

27 The proposed Consent Decree is procedurally fair since counsel for the United States  
 28 and counsel for the State of Nevada negotiated the proposed settlement at arms-length with

1 experienced counsel who represented the interests of the City of North Las Vegas. See United  
2 States v. Chevron U.S.A., 380 F. Supp.2d at 1111 (typically, courts examine procedural  
3 fairness to determine whether the negotiations process was “fair and full of adversarial  
4 vigor”). Additionally, the Consent Decree embodies a substantively fair settlement since it  
5 requires the City to develop and implement a Pretreatment Program that will help protect  
6 against disruptions at the City’s WWTP and help protect against unpermitted discharges to  
7 Las Vegas Wash in violation of the CWA. Additionally, it requires the City to pay a civil  
8 penalty of \$385,000 for its past violations. See, e.g., United States v. Pacific Gas & Elec., 776  
9 F.Supp.2d 1007, 1025 (N.D. Cal. 2011) (as to substantive fairness, “a court’s approval is  
10 nothing more than an amalgam of delicate balancing, gross approximations and rough  
11 justice”) (citations omitted) and BP Exploration, 167 F. Supp. 2d at 1051 (“substantive  
12 fairness concerns concepts of corrective justice and accountability”) (citations omitted).

13       B. The Proposed Consent Decree Is Reasonable And Is Consistent With The Purposes Of  
14       CWA.

15       In determining whether a Consent Decree for an environmental matter is “reasonable,”  
16 courts have considered whether the settlement adequately protects the public interest. See,  
17 Akzo, 949 F.2d at 1435 (citations omitted). In this case, Plaintiffs took into consideration a  
18 number of factors favorable to the public interest when proposing this settlement, including  
19 the environmental benefits, the potential cost of litigation, and whether the settlement is  
20 consistent with the CWA. As outlined above, a fundamental objective of the CWA is to  
21 restore and maintain the integrity of the nation’s waters. Section 101(a) of the CWA, 33  
22 U.S.C. § 1251(a). In this case, the City of North Las Vegas has worked cooperatively with  
23 EPA and NDEP to fashion a resolution that will have the City comply with the CWA and its  
24 NPDES permit by properly implementing a Pretreatment Program. The City’s  
25 implementation of an appropriate Pretreatment Program not only protects its WWTP, but it  
26 also furthers the CWA’s goal of maintaining the nation’s waters without sustaining  
27 unpermitted discharges of pollutants; and the settlement obtains the City’s compliance with  
28 the CWA in a far shorter time than if the parties had litigated the action. Additionally, the

1 settlement requires the City to pay an appropriate civil penalty for its historical violations.  
2 The civil penalty of \$385,000 is to be split equally between the federal and state governments.

3 **CONCLUSION**

4 For the foregoing reasons, the United States respectfully moves to enter the lodged  
5 Consent Decree as final judgment in this case. The settlement is fair, reasonable, and  
6 consistent with the purposes of the CWA in that the Consent Decree mandates the City to  
7 comply with the CWA by implementing an EPA approved Pretreatment Program, which will  
8 help to prevent unpermitted discharges into the nation's waters, and the settlement minimizes  
9 litigation and transactional costs for all parties.

10  
11 Date: November 22, 2017

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1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on November 16, 2017, I electronically filed the foregoing  
3 Unopposed Motion for Entry of Consent Decree and Memorandum in Support thereof with the  
4 Clerk of Court by using the CM/ECF system, and I served a copy of the same to all parties  
5 through their representatives, listed below.

6                   For the City of North Las Vegas:

7                   Christopher Craft  
8                   City Attorney  
9                   City of North Las Vegas  
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12                  For the State of Nevada:

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20                  Date: November 22, 2017

21                  *s/Esperanza Anderson*